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College Admission and Affirmative Action- Consequences and Alternatives

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COLLEGE ADMISSION AND AFFIRMATIVE ACTION— CONSEQUENCES AND ALTERNATIVES

DEREK BOK & WILLIAM BOWEN, *THE SHAPE OF THE RIVER: LONG
TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND
UNIVERSITY ADMISSIONS*
Princeton: Princeton University Press, 1998, 472pp.

*Reviewed by Ihan Kim**

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Though only two decades old, *Bakke's*¹ endorsement of affirmative action has the hollow ring of a bygone age. Justice Powell's belief that universities may use their First Amendment interest to create a diverse educational community² is under fire from many sides, and has been rejected outright in the Fifth Circuit.³ The "four essential freedoms" of academe—"to determine for itself on academic grounds who may teach, what may be taught, how it shall be

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1. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

2. See *Bakke*, 438 U.S. at 311–12.

3. See *Hopwood v. Texas*, 78 F.3d 932, 944 (5th Cir. 1996) ("[A]ny consideration of race or ethnicity by the law school for the purpose of achieving a diverse student body is not a compelling interest under the Fourteenth Amendment.").

taught, and who may be admitted for study"⁴—no longer seem to hold any currency with academe's critics.⁵

Citing lack of data, Justice Powell neither approved nor disapproved of UC-Davis's assertion that minority doctors contribute disproportionately to under-served communities.⁶ The lack of such empirical investigation since *Bakke* has led Robert Solow to describe the discussion as "all heat and no light."⁷

Investigations into affirmative action's effects have focused primarily on graduate schools admission programs.⁸ This is despite the tremendous numerical disparity between graduate and undergraduate enrollment. In 1987, 36,056 students graduated from law school and 15,429 from medical school, while 991,260 students received their bachelor's degrees.⁹ This type of student and their accomplishments during the intervening years are the focus of William Bowen and Derek Bok's study of affirmative action at selective undergraduate colleges—*The Shape of the River*.¹⁰ Former presidents of Princeton and Harvard Universities, respectively, neither author is a stranger to the issue. Bok's previous writings unabashedly support affirmative action in student admissions¹¹ and Justice Powell quoted Bowen's remarks on the subject in his *Bakke* opinion.¹² Though they claim not to have known what their study would find, it should come as no surprise that they conclude that "academically selective colleges and universities have been highly successful in using race-sensitive admissions policies to advance educational

4. *Sweezy v. New Hampshire*, 354 U.S. at 263 (1957) (Frankfurter, J. concurring) (citing *THE OPEN UNIVERSITIES IN SOUTH AFRICA* 10–12).

5. See, e.g., DINISH D'SOUZA, *ILLIBERAL EDUCATION* (1991) (Chapter 2 (admissions); Chapters 3–4, 7 (curriculum); Chapter 6 (faculty hiring)). [hereinafter *ILLIBERAL EDUCATION*].

6. See *Bakke*, 438 U.S. at 311–12.

7. Ben Gose, *A Sweeping Defense of Affirmative Action*, *CHRONICLE OF HIGHER EDUCATION*, Sept. 18, 1998, at A46–47.

8. See, e.g., SUSAN WELCH & JOHN GRUHL, *AFFIRMATIVE ACTION AND MINORITY ENROLLMENTS IN MEDICAL AND LAW SCHOOLS* (1998); Linda Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1 (1997) (law school affirmative action); Miriam Komaromy et al., *The Role of Black and Hispanic Physicians in Providing Health Care for Underserved Populations*, 334 NEW ENG. J. MED. 1305 (1996).

9. See LAW SERVICES, *MINORITY PARTICIPATION IN LEGAL EDUCATION AND THE PROFESSION*, 18, 71 (1990).

10. DEREK BOK & WILLIAM G. BOWEN, *THE SHAPE OF THE RIVER: LONG TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998) [hereinafter *BOK & BOWEN*].

11. See, e.g., DEREK BOK, *BEYOND THE IVORY TOWER* 91–115 (1982).

12. See *Bakke*, 438 U.S. at 313–14 nn.48–49.

goals important to them and societal goals important to everyone.”¹³ Heralded by some as empirical proof of affirmative action’s worth, *The Shape of the River* has also been criticized as a work unduly influenced by its authors’ prejudices.¹⁴ Yet, the value of the story here lies not in innovation, but in their quantitative approach to addressing the issue.

Bok and Bowen’s study grew out of the Andrew W. Mellon Foundation’s “College and Beyond” (C&B) database. This project is a comprehensive study of the graduates of twenty-eight “selective colleges.”¹⁵ Drawing from both institutional records and surveys sent in 1995–96, records were created of students who enrolled in 1951, 1976, and 1989.¹⁶ The surveys gathered information regarding admissions, college performance, subsequent education, occupational status, civic involvement, and family status.¹⁷ The long-term nature of the database allowed Bok and Bowen to follow thousands of individuals from high school through middle age.

One criticism of the study is that it focuses on the Swarthmores and Princetons of the world; thereby minimizing the importance of non-elite colleges that enroll many, many more students. However, by definition, affirmative action in admissions can only be implemented at colleges which have more selective admissions. Bok and Bowen’s study therefore was restricted to an “elite” group of colleges. Their conclusions correspondingly do not apply to the vast majority of public and private colleges and universities.¹⁸

13. BOK & BOWEN, *supra* note 10, at 290.

14. Compare, e.g., Ronald Dworkin, *Affirming Affirmative Action*, N.Y. REV. OF BOOKS, Oct. 22, 1998, at 91; William Raspberry, *A New Light on Diversity*, WASH. POST, Oct. 2, 1998, A27 (praising Bok and Bowen) with Abigail Thernstrom, *A Flawed Defense of Preferences*, WALL ST. J., Oct. 2, 1998, A14.

15. The twenty-eight colleges and universities are: Barnard College, Bryn Mawr College, Columbia University, Denison University, Duke University, Emory University, Hamilton College, Kenyon College, Miami University (Ohio), Northwestern University, Oberlin College, Pennsylvania State University, Princeton University, Rice University, Smith College, Stanford University, Swarthmore College, Tufts University, Tulane University, University of Michigan (Ann Arbor), University of North Carolina (Chapel Hill), University of Pennsylvania, Vanderbilt University, Washington University (St. Louis), Wellesley College, Wesleyan University, Williams College, and Yale University. See BOK & BOWEN, *supra* note 10, at xxviii.

16. See BOK & BOWEN, *supra* note 10, at xxvii–xxviii.

17. See *id.*

18. In 1997, only 47 colleges admitted less than half of their applicants, and only 12 admitted less than one-quarter. See *America’s Best Colleges: 1999 Annual Guide*, U.S. NEWS AND WORLD REP., Aug. 31, 1998, at 84–93. Bok and Bowen cite studies by Thomas Kane and Michael Nettles that have found race to be a factor in admissions only at the most selective twenty percent of four-year institutions; a limited degree of preference in the next twenty percent; and none in the remaining schools. See BOK & BOWEN, *supra* note 10, at 15 n.1.

Bok and Bowen's focus on comparing Blacks and Whites is another source of criticism. The authors acknowledge this limitation, citing practical and logistical reasons for excluding Asian Americans, Native Americans, and Hispanics.¹⁹

I. ADMISSIONS AND COLLEGE PERFORMANCE

A. Goals of the Admissions Process

Bok and Bowen believe that the admissions process should determine:

which set of applicants, considered individually and collectively, will take fullest advantage of what the college has to offer, contribute most to the educational process in college, and be the most successful in using what they have learned for the benefit of larger society. . . . Fairness should not be misinterpreted to mean that a particular criterion has to apply—that for example, grades and test scores must always be considered more important than other qualities and characteristics²⁰

Others consider college solely an academic experience. Thus, their goal is not to create "representative institutions, but institutions that select entrants on the basis of ability and interest regarding the course of instruction,"²¹ where "the admissions policies of selective universities [are] based on academic and extracurricular merit."²² Taken to an extreme, this view implies that students with a given set of qualifications are entitled to an education at certain colleges. As an example, when Jennifer Gratz received a letter from the University of Michigan rejecting her application to the Ann Arbor campus, her initial reaction was "[I]et's sue," though she subsequently enrolled at the University of Michigan's Dearborn campus.²³

19. See *id.* at xxvii. In their study, Bok & Bowen chose to use the terms "Black," "White," "Hispanic," "Asian American," and "Native American." These terms will be used in the review for sake of clarity.

20. BOK & BOWEN, *supra* note 10, at 277–78.

21. Lino Graglia, "Affirmative Action," *Past, Present and Future*, 22 OHIO N.U. L. REV. 1207, 1212 (1996).

22. ILLIBERAL EDUCATION, *supra* note 5, at 251.

23. Ethan Bronner, *Group Suing U. of Michigan over Diversity*, N.Y. TIMES, Oct. 14, 1997, at A3.

This feeling of a "right" to a University of Michigan, Ann Arbor education is diametrically opposed to Bok and Bowen's concept of admissions. The two former university presidents acknowledge that "[t]he most fundamental objective is to be sure that the qualifications of admitted students are above a high academic threshold,"²⁴ but their multi-dimensional view of the university incorporates other institutional goals, often overlooked by outside observers:

- [1] T]o admit an ample number of students who show particular promise of excelling in their studies
- [2] T]o assemble a class of students with a wide diversity of backgrounds, experiences, and talents
- [3] T]o attract students who seem especially likely to utilize their education to make valuable or distinctive contributions to their professions and to the welfare of society, [and]
- [4] T]o respect the importance of long-term institutional loyalties and traditions.²⁵

Examples of admission programs that contradict the merit-only model include legacy admissions and athletic preferences. Bok and Bowen gloss over these two programs, but there are a few points worth mentioning. C&B legacy students (children and/or relatives of alumni, depending on the institution) were admitted at twice the rate of non-legacy White students with comparable SAT scores.²⁶ Bok and Bowen attempt to justify this by saying that these applicants "tend to have stronger than average academic credentials."²⁷ Aside from feelings of an institutional "community," there are significant fund-raising concerns that are addressed in part by alumni-pleasing programs such as legacy admission, which Bok and Bowen refer to as "institutional loyalties."²⁸ The scope of these programs is sometimes incredibly dramatic. At Harvard, for example, one-fifth of the entering students over a forty-year period were admitted under legacy preferences, and in the 1980s, legacies were admitted at twice the rate of Blacks and Hispanics.²⁹

24. BOK & BOWEN, *supra* note 10, at 23.

25. *Id.* at 23–24.

26. *See id.* at 28.

27. *Id.*

28. *Id.* at 24. In 1996–97, colleges and universities raised \$4.65 billion from alumni. *See* CHRONICLE OF HIGHER EDUCATION ALMANAC, 1998–1999, 34 (1998) [hereinafter ALMANAC].

29. *See* WELCH & GRUHL, *supra* note 8, at 168.

Athletics admissions policies vary depending on the individual sports and schools involved, but for those identified as athletes at C&B schools there was a 78% admissions rate, without regard for the institution's level of athletic prowess.³⁰ Bok and Bowen do not attempt to justify the differing treatment accorded athletes. Instead, the athletic and legacy admission programs are cited as examples of how "complicated" the admissions process is.³¹ This implies that if affirmative action's critics go in for a penny, they should go in for a pound. For example, Jennifer Gratz's challenge against the University of Michigan's undergraduate liberal arts program's affirmative action admissions policy³² should also take on recruiting for Michigan's national-championship football, ice hockey, and swimming programs, as well as the preference she was given for being a Michigan resident. Though Ms. Gratz believes that her "seat" at Ann Arbor was given to someone else based on race, how does she know that it was not due to her inability to compete in the 200-meter backstroke?

The goal of a diverse student body is one familiar to all who have read *Bakke*.³³ In the words of the "Harvard Plan" appended to Justice Powell's opinion, "A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer."³⁴ In the calculus of diversity, affirmative action's critics often equate race with class, branding the children of minority professionals as undue beneficiaries of affirmative action.³⁵

Bok and Bowen correctly remind us that this substitution is an oversimplification. Diverse student bodies counteract stereotypes in a multitude of ways, as "not all members of a minority group may succeed in expanding the racial understanding of other students, any more than all those who grew up on a farm . . . can be expected to convey their rural perspective."³⁶ To seek only minority students from lower socio-economic groups also is contrary to Bok and Bowen's whole idea of a diverse educational environment, for "[t]he Black student with high grades from Andover may challenge the stereotypes of many classmates just as much as the Black student from the South Bronx."³⁷

30. See BOK & BOWEN, *supra* note 10, at 29.

31. *Id.*

32. See Complaint, Gratz v. Bollinger, Civ. No. C-97-75231 (E.D. Mich. filed Oct. 14, 1997).

33. *Bakke*, 438 U.S. at 312.

34. *Id.* at 323.

35. See, e.g., Graglia, *supra* note 21, at 1213; ILLIBERAL EDUCATION, *supra* note 5, at 35.

36. BOK & BOWEN, *supra* note 10, at 279-80.

37. *Id.* at 280.

Though this may be an unusual amount of time to spend on preliminaries, Bok and Bowen's study revolves around a very specific view of affirmative action's place in higher education, which includes neither diversity by quota nor as a remedy.³⁸ What they advocate is using affirmative action in a forward-looking way—to "identify[] individuals of high potential, permit[] students to benefit educationally from diversity on campus, and address[] long-term societal needs."³⁹

B. Implementing Race-Based Affirmative Action

Bok and Bowen's initial remarks about admissions provide valuable background information and a contextual framework. The general population conceives of admissions as a "merit-based" process, with a two-variable matrix of SATs and high school grades (GPAs) determining admission outcomes.⁴⁰ This popular conception ignores the complexity of the process, and as Bok and Bowen warn the casual observer, "talk of basing admissions strictly on test scores and grades assumes a model of admissions radically different from the one that exists [at selective colleges] today."⁴¹ This is because SATs and GPAs are not perfect predictors of college academic performance, and their rote application does not allow a college admissions program to address its non-academic objectives.⁴²

Exclusive use of the "merit-based" model by college admissions offices "would mandate a fundamental change of direction for institutions that recognize the many dimensions of 'qualification.'"⁴³ Since selective colleges and universities must turn down a large number of students with exceptional grades and test scores, use of this model becomes increasingly awkward as an application-to-admission ratio increases.⁴⁴

38. See *id.* at 283.

39. BOK & BOWEN, *supra* note 10, at 278.

40. See, e.g., DINESH D'SOUZA, THE END OF RACISM 310 (1995) [*hereinafter* END OF RACISM]. SAT scores, together with school acceptance rates, are the most common measures of determining a school's "selectivity". See BOK & BOWEN, *supra* note 10, at 15 n.1.; discussion *infra* Section I.D.

41. BOK & BOWEN, *supra* note 10, at 29.

42. Even D'Souza acknowledges that the SAT, at best, is only able to explain 50% of the variance in college academic performance. See D'SOUZA, END OF RACISM, *supra* note 40, at 310–11.

43. BOK & BOWEN, *supra* note 10, at 29.

44. See *supra* note 18 and accompanying text. A relatively high admissions rate does not immunize a college from controversy over its admissions practices. For example, the University of Michigan, Ann Arbor, with a 69% admission rate for its 1997 entering class, was sued over its affirmative action policies in the Fall of 1997.

Their opposition to the exclusive use of SATs and GPAs notwithstanding, Bok and Bowen employ SATs as a rough measure of academic ability and college selectivity.⁴⁵ This may seem duplicitous, but Bok and Bowen never disclaim the general predictive power of the SAT to gauge academic ability; rather, they do not overstate its importance as a sole measure of potential for success.⁴⁶ By relying on purely quantitative measures of “merit” to demonstrate the success of affirmative action beneficiaries despite unfavorable quantitative predictors, Bok and Bowen are also able to hoist critics on their own petard. This format also allowed the authors to explore the predictive power of the SAT as between Black and White students in a selective-college setting.⁴⁷

To conduct a thorough investigation, Bok and Bowen utilized more information than the C&B survey provided. They accessed detailed admissions information for the 1989 cohort at five “representative” C&B schools.⁴⁸ This allowed them to include test scores, high school GPAs, socio-economic status and ethnicity.⁴⁹ As one would expect, when they examined overall probabilities of admission by SAT score, chances for admission for White and Black students alike increased with SAT scores.⁵⁰ In addition, Black students were admitted at a consistently higher rate than White students with similar scores.⁵¹ However, high SATs by themselves secured neither Whites nor Blacks places in any of the five schools studied.⁵² Admissions probabilities for Whites increased steadily as

See Complaint, *Gratz v. Bollinger*, Civ. No. C-97-75231 (E.D. Mich. filed Oct. 14, 1997).

45. See BOK & BOWEN, *supra* note 10, at xxix.

46. See *id.* at 26–27. When possible, Bok and Bowen ran separate calculations using only class rank and compared these results with the SAT-only regressions; however, they did not find any significant difference in the predictive patterns. See *id.* at 27.

47. See *infra* note 72 and accompanying text.

48. BOK & BOWEN, *supra* note 10, at 17 n.4. These colleges are not named, but described as “three private research universities and two [private] liberal arts colleges.” *Id.* The implications of only using data from private institutions for this are discussed *infra* Section I.E.

49. See BOK & BOWEN, *supra* note 10, at 17.

50. See *id.* at 27 fig.2.5.

51. See *id.*

52. See *id.* at 27. These admission patterns are in contrast to those of many state colleges, which base admission on minimum GPAs, SAT scores, or ACT scores (the ACT, American College Test, is an analogue of the SAT used primarily in the Midwest and South). See, e.g., ARIZONA STATE UNIVERSITY, UNDERGRADUATE ADMISSION APPLICATION (1998) (requiring top 25% class rank, 22 ACT, 1040 SAT, or 3.0 GPA for Arizona residents); UNIVERSITY OF MINNESOTA—TWIN CITIES, APPLICATION FOR ADMISSION (1998) (applying a class rank + SAT/ACT formula for various programs);

SAT scores increased, topping out at approximately 60% for students scoring over 1500 (out of 1600), while Black students' probability of admission essentially hovered around 75% for students scoring over 1200, although it approached 100% for those scoring above 1500.⁵³

Bok and Bowen's critics will immediately cry foul upon seeing these results, pointing to the racial disparity, but they will most likely gloss over the hard numbers behind the statistics. There is a tremendous disparity in the number of Whites versus Blacks 1) taking the SAT at all, 2) scoring at levels competitive enough for admission to these schools, and 3) applying to these schools.⁵⁴ Though this does not affect the legal argument in the abstract, it raises the question of how much White applicants suffer because of these "preferences."⁵⁵ Given the small number of Black students scoring at competitive academic levels, it would seem that their admission rates would be higher; however, Bok and Bowen remind us that the multi-dimensional admissions process also takes into account a student's transcript, area of academic interest, and indications of either promise or underachievement gleaned from non-quantitative sources, such as recommendations and essays.⁵⁶

C. College Academic Performance

Once enrolled, what became of students admitted under affirmative action? Some have posited that "[w]hen students are given a preference in admission because of their race . . . it means that they are jumping into a competition for which their academic achievements do not qualify them and many find it hard to keep up."⁵⁷ Bok and Bowen found that this "poor fit" hypothesis did not hold true for C&B students. Black dropout rates were lower than the national average, despite the competition and academic rigor.⁵⁸ This comes as no real surprise, both because students at C&B schools are highly

UNIVERSITY OF MONTANA, APPLICATION FOR ADMISSION (1998) (requiring top 50% class rank, 22 ACT, or 1030 SAT). *See also* TEX. EDUC. CODE ANN. § 51.803(a) (West 1998); *infra* note 88 and accompanying text.

53. *See* BOK & BOWEN, *supra* note 10, at 27 fig.2.5.

54. For example, 149,061 White students in the 1989 cohort scored above 600 on the Math SAT; of the 96,615 Black students who took the SAT at all, 3,207 Black students scored over a 600. *See* BOK & BOWEN, *supra* note 10, at 350 tbl.B.4.

55. *See infra* Section I.D.

56. *See* BOK & BOWEN, *supra* note 10, at 28.

57. ABIGAIL THERNSTROM & STEVEN THERNSTROM, AMERICA IN BLACK AND WHITE 406 (1997), *quoted in* BOK & BOWEN, *supra* note 10, at 258; *see also* D'SOUZA, ILLIBERAL EDUCATION, *supra* note 5, at 39.

58. *See* BOK & BOWEN, *supra* note 10, at 56-57.

talented and motivated, and because the national benchmark is based on the NCAA Division I institutions, which have depressingly low graduation rates.⁵⁹ Given critics' allegations, the surprising finding was that graduation rates correlated directly with school selectivity.⁶⁰

There are varying levels of selectivity within the "selective" group of C&B schools. Bok and Bowen divided the schools into three tiers of selectivity by average SAT scores for the incoming classes.⁶¹ This allowed a test of the "poor fit" hypothesis, which would predict that a student with a 1100 SAT would be overmatched at a school where the average SAT was 1300, and should, therefore, have a greater probability of dropping out. Bok and Bowen found the exact opposite—Black students attending the most selective (first tier) institutions, with the weakest SAT scores (below 1000), had an 88% graduation rate.⁶² Black students with the same range of scores enrolled at third tier schools, where they would be among more students (White and Black) with scores similar to their own, graduated at a 65% rate.⁶³ For students with higher SAT scores graduation rates increased overall, but the pattern remained the same.⁶⁴ If the C&B students admitted under race-based affirmative action were overwhelmed to the point of failure, Bok and Bowen did not find any evidence.

Bok and Bowen give three possible explanations for this pattern. First, the most selective schools are most likely to enroll exceptional students who, low SATs aside, exhibit academic promise and leadership potential.⁶⁵ Institutional resources available per student also could explain the disparity. First tier schools have small enrollments and large endowments, and can therefore provide more academic and financial support.⁶⁶ While this difference in resources is discernable as between the first two tiers and the third, it does not

59. See *id.* at 57 n.6.

60. See *id.* at 61.

61. Schools were classified by average entering SAT for the 1989 cohort as follows: First tier schools (SAT over 1300): Bryn Mawr, Duke, Princeton, Rice, Stanford, Swarthmore, Williams, and Yale. Second tier schools (SAT between 1300 and 1151): Barnard, Columbia, Emory, Hamilton, Kenyon, Northwestern, Oberlin, Smith, Tufts, Pennsylvania, Vanderbilt, Washington, Wellesley, and Wesleyan. Third tier schools (SAT under 1150): Denison, Miami, Penn State, Tulane, Michigan, and North Carolina. See *id.* at 339 tbl.B.1.

62. See *id.* at 61 fig.3.3.

63. See *id.*

64. See *id.* This pattern was also evident in the White population, albeit with smaller disparities. See *id.* at 62 fig.3.4.

65. See *id.* at 63.

66. See *id.* at 64.

explain the disparity in graduation rates between the first two tiers, where there are relatively equal numbers of universities and liberal arts colleges, and institutions with very high levels of resources per student.⁶⁷ The third argument is that students at the more prestigious first-tier institutions realize the value of their degree and are more motivated than their colleagues at other schools to earn their degree.⁶⁸ Again, this may explain the discrepancy between the schools in the first two tiers and those in the third, but it does not account for that between first and second tier schools and their similar "prestige value."

Bok and Bowen's critics would offer a fourth reason: prestigious schools have "dumbed down" their curriculum so everyone graduates, and more specifically, "a sizable group has only finished by concentrating in congenial fields such as Afro-American or Ethnic Studies, under the direction of tolerant faculty advisers."⁶⁹ Bok and Bowen found that compared to their White counterparts, Black C&B students were more likely to major in psychology, political science and sociology, less likely to major in English and history, but just as likely to study biology, math, chemistry, engineering, and philosophy.⁷⁰ African American studies was no "safe haven" for hordes of Black students—less than three percent majored in any type of area studies, including African American studies.⁷¹

A distressing problem that Bok and Bowen discuss, without finding a suitable explanation, is the phenomenon of "underperformance." Put simply, as compared to White students with similar SAT scores, Black students graduated college with lower class ranks.⁷² Controlling for any factor they could incorporate—high school grades, socioeconomic status, gender, selectivity of the college, field of study, college athletic participation, public or private institution—Bok and Bowen always found a measurable gap in class rank between Black and White students with similar test scores.⁷³ This phenomenon's breakdown along strictly racial lines suggest that there is a factor that current admissions indicia cannot account for.

67. The Chronicle of Higher Education Almanac lists the top twenty-five institutions by endowment-per-student. In 1997, five of seven top tier institutions, three of 15 of the second tier institutions, and no third tier institutions were listed in the Almanac's top 25. See ALMANAC, *supra* note 28, at 38.

68. See *id.*

69. ILLIBERAL EDUCATION, *supra* note 5, at 249.

70. See BOK & BOWEN, *supra* note 10, at 71.

71. See *id.*

72. See *id.* at 77.

73. See *id.*

Bok and Bowen list possible sources of this phenomenon, including peer pressure exerted by members of the Black community, lack of adequate academic preparation (even with students possessing stellar high school records), and giving into low expectations and stereotypes, but come to no conclusion.⁷⁴ That Bok and Bowen were not able to find an answer is not necessarily indicative of any laxness on their part, but a reflection of the complexity of the problem and the need for further investigation.

It is worth reiterating that while the academic performance of Black students as compared to White students is generally lower, Black students are graduating at a very high rate. This may mitigate the impact of class rank data to a certain extent, since at any institution, no matter how prestigious or rigorous, half of the class will graduate with better grades than the other half. The more important question is how many Black students are part of that class.

D. Examining Hypothetical Scenarios

While the descriptive portions of the C&B study are impressive, the true power of Bok and Bowen's project is their discussion of race-neutral admissions policies. Their working assumption is that under a race-neutral scheme, admission rates for Blacks should be the same as for Whites, controlling for test scores, grades, and other non-race-based admission data.⁷⁵ The results they found, though not surprising, are depressing nevertheless.

1. Strict Race-Neutral Admissions

For the 1989 cohort, the chances of admission for Blacks under a race-neutral program would have dropped from 42% to 13%.⁷⁶ The admissions rate for Whites would have risen from 25% to 26.5%.⁷⁷

How many Black first-year students would the C&B schools enroll with such admission rates? If they enrolled at the same rate as they actually did in 1989, under the race-neutral admissions scheme, Black students would have made up 2.1% of the 1989 cohort, down from the actual figure of 7.1%.⁷⁸ Bok and Bowen took these predictions and compared them to enrollment changes at the

74. See *id.* at 78–85.

75. See *id.* at 31.

76. See *id.* at 32.

77. See *id.* at 36.

78. See *id.* at 36 fig.2.10.

University of California—Berkeley. Though not a C&B school, Berkeley is comparable to the group, and provided a “real-life” check on their project.⁷⁹ They found that the differences between Berkeley’s 1997 and 1998 entering classes confirmed their predictions. Admission rates at Berkeley ran at 48.5% for Blacks and 29.9% for Whites in 1997 as compared to 15.6% for Blacks and 30.3% rate for Whites in 1998.⁸⁰ The 1997 entering class was 6.8% Black; the 1998 class was 2.4% Black.⁸¹

2. Class-Based Affirmative Action

Bok and Bowen also substituted class-based affirmative action for race-based affirmative action. According to this idea, ignoring race but giving weight to applications from students with economically disadvantaged backgrounds should theoretically still allow Black students to be admitted in larger numbers than without any sort of preferences, due to their overrepresentation in lower socio-economic groups.⁸² While this may be true in theory, demographic realities keep this from becoming an effective substitute. In 1992, Blacks and Hispanics made up only 17% of all low-income students graduating high school in the top ten percent of their class that year.⁸³ Though most Black students entering college in 1989 (51%) were from lower-income families, the majority (71%) of matriculants at the C&B schools were from middle-class backgrounds.⁸⁴ In order for a class-based program to succeed, students from lower-class backgrounds who would not ordinarily consider C&B-type schools due to financial sticker-shock or other factors would have to be recruited with an intensity matched only by the fund-raising needed to support the financial aid burden.⁸⁵ Moreover, the recruitment of students based upon socio-economic status alone does not take into account Bok and Bowen’s concept of a diverse student body—including leadership and/or academic potential.⁸⁶ Finally, even those who propose consideration of class-based affirmative action

79. Berkeley’s average entering SAT score in 1989 was 1176, putting it in Bok & Bowen’s second tier category. *See id.* at 32.

80. *See id.* at 32–33.

81. *See id.* at 36.

82. *See generally* WELCH & GRUHL, *supra* note 8, at 172; RICHARD D. KAHLENBERG, *THE REMEDY: CLASS, RACE AND AFFIRMATIVE ACTION* (1996); Deborah Malamud, *Class-Based Affirmative Action: Lessons and Caveats*, 74 TEXAS L. REV. 1847 (1996).

83. *See* BOK & BOWEN, *supra* note 10, at 47–49.

84. *See id.*

85. *See id.* at 50.

86. *See id.* at 271; *see also supra* note 35 and accompanying text.

programs acknowledge the problems of defining "class," and the trade-offs present in constructing such categories.⁸⁷

3. Guaranteed Admission Based on Class Rank

The last alternative that Bok and Bowen consider is Texas's approach to maintaining racial diversity in the wake of *Hopwood v. Texas*,⁸⁸ which barred schools in the Fifth Circuit from using race as a factor in admissions.⁸⁹ In response, the Texas legislature passed Section 51.803, requiring the State's top public universities to admit any public high school student graduating in the top ten percent of his or her class.⁹⁰ Though this may allow Texas to maintain facial racial diversity on its campuses due to the state's demographics, this program may not work in other states whose patterns of ethnic and racial diversity differ, as well as states with less-selective public universities.⁹¹ Bok and Bowen also adamantly disapprove of this strategy's promotion of racial diversity for its own sake.⁹²

The guaranteed admission comes without any examination of a student's high school curriculum, so that students from poor districts (whether Houston or Texarkana) could come to UT-Austin or College Station with a high-school class rank demonstrating academic success as compared to his/her high school colleagues, but not necessarily as against his/her would-be university colleagues. While the University of Texas-Austin requires students to have taken certain high school classes before admission, (for example, four years of English), this requirement is waived for those applying under section 51.803.⁹³ Thus, some students can enter the most rigorous UT campus without any examination of their academic credentials past their class rank.

Bok and Bowen also point out Texas's lack of companion legislation increasing financial aid. They suggest that Texas's mandate gave a great platform to tout progressiveness in the face of legisla-

87. See WELCH & GRUHL, *supra* note 8, at 173 ("Ultimately, it could be more problematic to measure class than it is to measure race . . .").

88. 78 F.3d 932 (5th Cir. 1996).

89. *Hopwood*, 78 F.3d at 962.

90. TEX. EDUC. CODE ANN. § 51.803(a) (West 1998) ("Each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate . . . if the applicant graduated . . . with a grade point average in the top 10 percent of the student's high school graduating class.").

91. See *supra* note 54 and accompanying text.

92. See BOK & BOWEN, *supra* note 10, at 273-74.

93. See THE UNIVERSITY OF TEXAS AUSTIN—YOUR GUIDE TO APPLYING FOR FRESHMEN ADMISSION 5 (1998).

tive electoral accountability, but avoided the financial commitment needed to make the plan effective.⁹⁴ The Texas plan does not expressly fund additional student academic support programs. Consequently, students admitted under Section 51.803 may find themselves overwhelmed academically without any means of assistance.

Private schools, including the vast majority of the C&B schools, would have no way to implement a similar program, as students come from all corners of the nation and the world. Though private schools may follow the lead of public schools in some areas, Texas's program has no private analogue.

E. The Effect of Private College-Only Modeling

Despite their attempt to select schools representative of the C&B group, the absence of public universities from the admissions subset of the study dramatically affects the conclusions that Bok and Bowen draw from their calculations. Admissions counselors at larger public institutions, with more applications to review, cannot take as much time to analyze the non-quantitative factors Bok and Bowen cite as contributing to Black students' success.⁹⁵ Concerned that there may have been some disparities between the five schools they selected to examine in depth, they note in running their calculations for each school individually, they found that the "patterns are remarkably consistent" across individual schools.⁹⁶ However, this may only indicate that private schools have relatively uniform practices and comparable administrative resources, but says little about the consistency between private and public universities. Only by running the same model with one or more of the public universities in the C&B database could this question be answered.

Given that challenges to affirmative action have been directed towards public institutions,⁹⁷ the need for this data to be validated at

94. See BOK & BOWEN, *supra* note 10, at 272.

95. The ratio of applications to admissions officers at a college varies roughly by institution size. At small liberal arts colleges, it is around 400:1. Medium-sized private universities are around 1000:1, while large state universities have ratios as large as 3000:1. Author's phone conversations with admissions offices of Amherst College, Stanford University and Pennsylvania State University on Nov. 12, 1998.

96. BOK & BOWEN, *supra* note 10, at 17 n.4.

97. See, e.g., *Gratz v. Bollinger*, Civ. No. C-97-75231 (E.D. Mich. filed Oct. 14, 1997); *Grutter v. Bollinger*, Civ. No. C-97-75928 (E.D. Mich. filed Dec. 3, 1997) (challenging the University of Michigan Law School's affirmative action admission policy); *Smith v. University of Wash. Law Sch.*, 2 F. Supp.2d 1324 (W.D. Wash. 1998) (certifying class in action challenging the University of Washington Law School's

the public school level is especially important. In addition, though private universities are able to operate with very general types of institutional goals, public universities' admissions programs may be limited by state charters specifying the institutional mission.⁹⁸

II. AFTER COLLEGE: GRADUATE SCHOOL AND EMPLOYMENT

Good intentions aside, the whole program is a failure if Black students graduate unprepared for life after college. Bok and Bowen first measure post-graduation success via graduate school completion. For the 1976 cohort, 56% of both Black and White graduates earned graduate degrees.⁹⁹ Forty percent of Black C&B graduates earned professional or doctorate degrees—five times the national average for Blacks—as compared to 37% of all White C&B graduates.¹⁰⁰ When broken down by professional program, Black C&B graduates were more likely to earn J.D.s (14% of Black C&B graduates to 11% of Whites) and M.D.s (11% to 8%), equally likely to earn M.B.A.s (13%), and somewhat less likely to earn Ph.D.s (4% to 7%).¹⁰¹ Differences in graduate school completion were consistent at all SAT score levels, as between Blacks and Whites.¹⁰²

Are these findings indicative of the drive and motivation of students that C&B schools admit, or do they indicate that profes-

affirmative action admission policy); *Coalition for Econ. Equity v. Wilson*, 946 F. Supp. 1480 (S.D. Cal. 1996), *vacated* 110 F.3d 1431 (1997) (challenging Proposition 209, which eliminated the use of race in public college admissions, among other state activities); *see also* *Wessmann v. Gittens* 160 F.3d, 790 (1st Cir. 1998) (challenging admissions programs at Boston magnet high schools); *Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316 (N.D. Cal. 1997) (challenging admissions programs at San Francisco's Lowell High School); *supra* note 44 and accompanying text.

98. For example, the University of Michigan's charter requires institutional goals to focus on educating state residents. *See, e.g.*, MICH. COMP. LAWS § 390.2 (1998) ("The [University of Michigan] shall provide the inhabitants of this state with the means of acquiring a thorough knowledge of the various branches of literature, science and arts."); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 720 n.1 (listing the 1884 charter's goals as "the maintenance of a first-class institution for [women's] education in the arts and sciences, for their training in normal school methods and kindergarten, for their instruction in bookkeeping, photography, stenography, telegraphy and typewriting").

99. *See* BOK & BOWEN, *supra* note 10, at 98 fig.4.2. The 1989 cohort was not examined. *See id.* at 98.

100. *See* BOK & BOWEN, *supra* note 10, at 98 fig. 4.2.

101. *See id.* at 100 fig.4.3.

102. *See id.* at 107 fig.4.6. For example, 32% of Black students who scored below 1000 on the SAT earned a professional or doctorate degree, compared to 17% of Whites. At the upper range of SAT scores, 62% of Blacks earned professional or doctorate degrees, as compared to 53% of Whites. *Id.*

sional school affirmative action policies have a heavy hand in their processes as well? Bok and Bowen conclude that "many Black [C&B] matriculants who would have been rejected under a strict race-neutral admissions policy [at the same school] went on to earn advanced degrees."¹⁰³ This may be true, but if affirmative action ends at the undergraduate level, it would almost definitely end at the graduate level. Noting the accomplishments of Black students who have benefited from affirmative action policies once, they do not ask whether college underperformance or inadequate high school academic preparation hinders Blacks in graduate school. Bok and Bowen believe that this concern is over-emphasized by critics, arguing that their data "are indicative of more than merely having gained admission to graduate programs, since they are based on success in completing the degree requirements."¹⁰⁴ However, entry into the professions is not just based on graduation from the appropriate program; licensing (e.g., the bar exam for lawyers, board exams for doctors, CPA exams for accountants), poses further hurdles.¹⁰⁵

Once C&B graduates finished their education and began their professions, the vocational outcomes described by Bok and Bowen reveal no major surprises, but do provide interesting food for thought. Charles Murray's concern that "preferential treatment [in college admissions] . . . perpetuates the impression of inferiority"¹⁰⁶ does not seem to hold true. Selective college attendance seems to mean a great deal. As measured by income, the distribution of Black C&B graduates is higher than the national distribution of both Black and White college graduates, closely following the pattern of White C&B graduates.¹⁰⁷ In other words, "[though] graduation from a selective college hardly guarantees a successful career, it may open doors, helping Black matriculants overcome any negative stereotypes that may still be held by some employers and create opportunities not otherwise available."¹⁰⁸ For Blacks and Whites alike, income levels increased as school selectivity increased, emphasizing the 'gilding effect' of selective schools.¹⁰⁹

103. See BOK & BOWEN, *supra* note 10, at 111.

104. *Id.* at 109.

105. For a discussion of a race-based evaluation of bar passage rates, see Wightman, *supra* note 8, at 38.

106. RICHARD HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE*, 207 (1994) *quoted in* BOK & BOWEN, *supra* note 10, at 263.

107. BOK & BOWEN, *supra* note 10, at 127 fig.5.3.

108. *Id.* at 130.

109. See *id.* at 140.

These findings may especially anger Bok and Bowen's critics, since they provide evidence of the power of a C&B degree. If a Black student was admitted, based on race, over a qualified White student, than that White student is suffering a calculable harm. Abigail Thernstrom has called this a "Yale or nothing" view of life, and cites examples of Blacks who have achieved prominence in society despite attending not-so-prestigious institutions (she lists mostly alumni of Historically Black Colleges and Universities) as evidence that preferential admissions policies are unnecessary for success.¹¹⁰ This criticism is more invidious than it seems at first blush. While Thernstrom is right in saying that some individuals do not need the "boost" in socio-economic mobility that a prestigious college degree provides, she also implies that Blacks should not be allowed to receive that boost. Rather, the status quo, granting Whites access to this socio-economic boost, should be maintained. Blacks, according to her, should only need token representation in the professional ranks, since the smattering of lawyers, doctors and executives that have succeeded despite societal discrimination and without drawing on institutional boosts is all that is necessary. Put another way, Blacks should rely on the theory that success is attainable, regardless of one's alma matter, instead of accepting the reality that certain colleges "are more equal than others" in the eyes of professional school admissions officers, law firms, college faculty members, and corporate hiring committees.

III. COMMUNITY PARTICIPATION AND VALUING DIVERSITY

A. Community Participation

Bok and Bowen consider developing community leaders a primary goal of the university.¹¹¹ Are Black graduates of C&B institutions involved in their communities, and the Black community in particular? Among the nay-sayers is Cornel West, who describes the newly mobile Black middle class as "not simply different than its predecessors—[but] more deficient, and to put it strongly, more decadent."¹¹² The C&B data seem to refute West's claim. Bok and Bowen did not ask Black C&B graduates whether they were involved in the Black community specifically, but rather

110. Thernstrom, *supra* note 14, at A14.

111. See *supra* Section I.A.

112. CORNEL WEST, RACE MATTERS 54 (1996) (alteration added) quoted in BOK & BOWEN, *supra* note 10, at 173.

about their participation in community organizations by subject and type. Blacks in the 1976 cohort working full-time were more likely to participate in community, social service, youth, and educational organizations than Whites working full-time.¹¹³ Not only was participation higher in certain types of groups, in every category of organization surveyed, Black men participated as leaders at higher rates than White men.¹¹⁴

Bok and Bowen seem to think that increased civic involvement is evidence of a social duty felt by Black C&B graduates to contribute to the Black community. However, they base this only on the sheer rate of civic participation. They did not ask people to disclose their motives for participating in or leading a particular activity or group.¹¹⁵ They do admit that West's claim may not be so far off, and "[p]ossibly, black graduates of selective colleges and universities will gradually come to mimic the behavior of the majority and replicate the so-called 'white flight' to suburbia, allowing the lure of personal gain and affluent lifestyles to remove them from feeling an obligation to social service."¹¹⁶

Increased involvement in professional associations may come about through groups like minority bar associations, or their medical and corporate analogues, but the impact of a greater number of minority professionals on minority communities has not been established with certainty. The empirical evidence that Justice Powell sought in *Bakke* has not yielded a definite conclusion; studies in the past three years have come to differing outcomes.¹¹⁷ Bok and Bowen's critics have described the increased involvement of Black professionals in their communities as compensating for lackluster careers. According to the Hoover Institution's Shelby Steele, "[a]s everyone in the academic world knows, people who are not at the top of their profession try to compensate for that by doing a lot of community work."¹¹⁸ Though Bok and Bowen claim that this is not

113. See BOK & BOWEN, *supra* note 10, at 159–60.

114. See *id.* at 160.

115. See *id.* at 328 fig.C.1.

116. *Id.* at 171.

117. Compare Miriam Komaromy et al., *supra* note 9 (finding Hispanic and Black graduates of UC-San Francisco School of Medicine serve significantly more Hispanic and Black patients than their White counterparts) with Robert Davidson & Ernest Lewis, *Affirmative Action and Other Special Consideration Admissions at the University of California, Davis, School of Medicine*, 278 J. AMER. MED. ASSOC. 1153 (1997) (finding no significant difference as between White and minority graduates of UC-Davis Medical School).

118. Gose, *supra* note 7.

true, there is no way to evaluate the accuracy of either Steele or Bok and Bowen's explanation.

A related question is the degree to which involvement would change as a result of race-neutral admissions policies. Professional group involvement would probably decrease, due to the "feeder school" nature of the C&B group, but would these individuals assume leadership positions in their community regardless?

B. Educational Benefits from Diversity

What, if anything, did the C&B study say about the educational benefits of diversity? After all, this is the reason that Powell used to justify allowing "Harvard Plan" affirmative action programs to continue. As he noted, "it is not too much to say that the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."¹¹⁹ Bok and Bowen attempted to reach these findings by asking C&B graduates to reflect on their college experiences, but warn us that they "have by no means resolved problems involved in explaining precisely how, in what circumstances, and to what degree diversity on campuses has enriched education."¹²⁰

Bok and Bowen asked the 1976 and 1989 cohorts if they thought that college helped them to "work effectively and get along with people from different races/cultures."¹²¹ They found that 70% of Blacks in 1989 answered affirmatively as compared to 57% in 1976, while 63% of Whites answered affirmatively in 1989 as compared to 46% in 1976.¹²² Bok and Bowen hypothesize that these increases are the result of a more enlightened population—the 1989 cohort was more aware of the importance of meeting people from different backgrounds and schools were better at bringing students together.¹²³

While these differences may be true, Bok and Bowen ignore changing demographics between the 1976 and 1989 cohorts. The migration of the White middle-class from the city to suburbs was just beginning while the 1976 cohort was in high school, and the consequential drop in racial interaction was fully realized when the 1989 cohort were coming of age. For the 1989 cohort, fewer chances

119. 438 U.S. at 313 (quoting *Keyishian v. Board. of Regents*, 385 U.S. 589, 603 (1967)).

120. BOK & BOWEN, *supra* note 10, at 219.

121. *Id.* at 225.

122. *See id.* at fig.8.2.

123. *See id.* at 226.

to interact with other races may have increased the importance of such opportunities during college.

How extensive was student interaction at the C&B schools? Bok and Bowen asked the 1989 cohort whether they “knew well” two or more students of different races, from different parts of the country/world, from wealthier/poorer families, with more liberal/conservative political beliefs.¹²⁴ In the non-racial categories, there was almost no difference between Blacks and Whites in the “yes” responses.¹²⁵ Racial interaction was the exception. Almost 90% of Blacks thought that they knew two or more White classmates during college, while 56% of Whites thought they knew well two or more Black classmates.¹²⁶ Black and White respondents felt they knew Asian American classmates in roughly equal numbers (56% and 58%, respectively), though far fewer Whites than Blacks felt like they knew two or more Hispanics or Native Americans (26% to 54% for Hispanic classmates, 5% to 20% for Native American classmates).¹²⁷ Bok and Bowen do not investigate the reasons behind these relative disparities, but do suggest that under race-neutral admissions, the percentage of the student body that would be Black would be similar to the current percentages of Native American students, and that interaction levels would correspondingly diminish.¹²⁸

How did this interaction vary by institution? Though there was not a perfect correlation, there was a definable relationship between the Black population of a school and the percentage of a school's Whites who knew two or more Black classmates.¹²⁹ This relationship was not a steady progression; Bok and Bowen found that schools where Blacks made up five percent of the student population had a markedly higher rate of interaction as compared to schools with a four percent Black population.¹³⁰ This dramatic jump is described as evidence of a “critical mass” theory; that a larger Black population reduces the feeling of an “‘outsider’ group affiliation that inhibits movements into the [White] mainstream.”¹³¹ While this seems commonsensical, it counters the notion that Black students do not take an active part in the greater college community, as described by

124. See *id.* at 232.

125. See *id.* Blacks were slightly more likely to know two more classmates from different countries well, while whites were slightly more likely to know classmates with differing political beliefs well. See *id.*

126. See *id.*

127. See *id.* at 233.

128. See *id.* at 235.

129. See *id.* at 235 fig.8.4.

130. See *id.* at 234.

131. *Id.* at 236.

“theme” or “special” residence halls based on ethnicity, anecdotal observations of single-race dining hall tables (with tables of all-Black students the outlier, but all-White students the norm), or racial or ethnic-centered fraternities and sororities. These findings also counter any notion that larger Black populations create all-inclusive social networks that may reduce the level of interaction between Black and White students, especially since Bok and Bowen reveal that interaction did not vary significantly according to institution size.¹³²

Do these findings adequately negate the educational benefits of diversity? While Justice Powell was “willing to rely on the statements of university officials,” Bok and Bowen see their work as testing their assertions “against the views and impressions of those who have actually experienced racial diversity first-hand.”¹³³ Believing they have documented how students were able “directly or indirectly, to learn from their differences and to stimulate one another to reexamine even their most deeply held assumptions about themselves and their world,”¹³⁴ Bok and Bowen leave for us the task of integrating their data within an argument supporting affirmative action that will survive contemporary court challenges.

CONCLUSION

The Shape of the River has become a rhetorical weapon, used by both sides of the debate. The most recent example of the ongoing attack on affirmative action is Initiative 200, a Washington state initiative that eliminated all of the state’s race-based preferences, including admission in public colleges and universities.¹³⁵ *The Shape*

132. *See id.* at 237.

133. *Id.* at 253–54.

134. *Bakke*, 438 U.S. at 313 n.48 (quoting William Bowen’s remarks to Princeton alumni).

135. The text of the Initiative relating to education read:

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting.

....

(7) For the purposes of this section, “state” includes, but not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district or other political subdivision or government instrumentality of or within the state.

of the River was discussed numerous times in news stories and editorials leading up to the election,¹³⁶ and Bok spoke in person to the University of Washington's Board of Regents about the results of the study.¹³⁷ While Bok may have reinforced the views of University Regents in favor of affirmative action, it was not enough to win over a majority of the voters.¹³⁸

Bok and Bowen's hope that their book will "shape the debate," as expressed by the title to their penultimate chapter, has certainly come true. As attacks on affirmative action shift away from college admissions, the scope of the study may render it less helpful to the larger debate. The difficulty with adapting *The Shape of the River* to other affirmative-action scenarios is the authors' reliance on the admissions process as a lynchpin holding affirmative action in place. Admissions officers at selective schools get to pick and choose, relying both on quantitative and non-quantitative means of evaluating applications in a way that is difficult to justify in any other field.

Bok and Bowen do not view past discrimination or current disparate treatment/impact as viable rationale for college affirmative action policies. In fact, the authors believe that these reasons should *not* justify college and university affirmative action policies.¹³⁹ They believe that the goals of a university admissions policy should be based on societal benefits. They ask: If the C&B schools and their kindred "reject[ed], on race-neutral grounds, more than half of the black students who otherwise would attend these institutions, [raising] the probability of acceptance for another white student from 25% to, say, 27% at the most selective colleges and

136. See, e.g., Joni Balter, *I-200: Affirmative Action Tug of War—Separating Fact From Fiction on This Misleading Measure*, SEATTLE TIMES, Nov. 1, 1998, at B11; Gordy Holt & Ruth Schubert, *Initiative 200 Wrong, Bond Tells Rally*, SEATTLE POST-INTELLIGENCER, Oct. 17 1998, at B1; Marsha King, *I-200—Equality on Campus: Are We There Yet?—Efforts to Diversify State Colleges Show Mixed Results After 30 Years*, SEATTLE TIMES, Oct. 18, 1998, at A20; *I-200 Does Not Pass Burden-of-Proof Test*, SEATTLE POST-INTELLIGENCER, Oct. 4, 1998, at E2; *Affirmative Action Works*, SEATTLE TIMES, Sept. 20, 1998, at B10.

137. See David Postman & Barbara A. Serrano, *Big Victories for Murray and I-200*, SEATTLE TIMES, NOV. 4, 1998, at A1.

138. See *id.*

139. See BOK & BOWEN, *supra* note 10, at 283. They state as follows:

Neither of the authors of this study has any sympathy with quotas or any belief in mandating the proportional representation of groups of people defined by race or any other criterion, in positions of authority. Nor do we include ourselves among those who support race-sensitive admissions as compensation for a legacy of racial discrimination.

universities[, w]ould we, as a society, be better off?"¹⁴⁰ Bok and Bowen do not think so. As proof of the C&B schools' success, they point to the achievements of the 700 Black members of the 1976 cohort who they believe would have been rejected under a race-neutral admissions process. Over 225 of them earned profession degrees or doctorates, over 300 are leaders of civic activities, and the average earnings of the group is over \$71,000.¹⁴¹ In justifying the award of this "premium" to these students, Bok and Bowen remind us that "the relative scarcity of talented black professionals is all too real. It seemed clear to a number of us . . . that American society needs the high-achieving black graduates who will provide leadership in every walk of life."¹⁴²

Whether or not they are correct, Bok and Bowen's view of affirmative action is not transferable to other forms of affirmative action that do not rely on the unquantifiable predictors used in college admissions, such as the contracting programs at issue in *Croson*¹⁴³ and *Adarand*,¹⁴⁴ primary-school integration programs,¹⁴⁵ and other affirmative action programs outside of the academy.

As far as it goes, however, Bok and Bowen's study has served its purpose. When indicting UC-Berkeley's (now-discontinued) admission practices, Dinesh D'Souza evoked Learned Hand's remark that "[i]f there are better ways of testing scholarship, let us by all means have them, but whatever they are, success in them is the chief aim of a college."¹⁴⁶ If success in developing high-achieving civic leaders is indeed "the chief aim of a college," Bok and Bowen have demonstrated that selective colleges have done their students right and their supporters proud through their use of affirmative action. Putting their trust in the human element of the admissions process, Bok and Bowen show that affirmative action is effective. However, showing the success of one specific form of affirmative action does not vindicate other forms. That task is left for others.

140. *Id.* at 285.

141. *See id.* at 281.

142. *Id.* at 283.

143. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

144. *Adarand Constructors v. Peña*, 515 U.S. 200 (1995).

145. *See supra* note 97.

146. D'SOUZA, *ILLIBERAL EDUCATION*, *supra* note 5, at 46.